

Internal Revenue Service

District Director



Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to : EP/EO

Date: JUN 02 1994

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.



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5/26/94

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely Yours, [REDACTED]

[REDACTED]
District Director

Enclosures: 3

cc: [REDACTED]

ENCLOSURE I

[REDACTED]
[REDACTED] was incorporated in the State of [REDACTED] on [REDACTED].

Your Articles of Incorporation state that the purposes of your Corporation are to:

- a) Carry out and enforce the Declaration of Covenants and Restrictions for [REDACTED].
- b) To maintain and manage the real property subject to the Restrictions.
- c) To collect, receive and receipt for, as well as sue for, funds and disburse the same.
- d) To exercise all other powers granted to nonprofit corporations.

[REDACTED] is an industrial and research commercial real estate development. Buildings and substantially all surrounding real estate is owned by separate unrelated individuals and/or corporations. Your organization's Form 1024 application states that the activities of the [REDACTED] will be to assess and collect fees to provide for the maintenance of common areas, signage, and insurance.

The Bylaws state that membership in your organization shall consist of any person or entity that is the holder of fee simple title to all or any portion of the real property which is subject to the Declaration of Covenants and Restrictions for [REDACTED] and that is subject to assessments.

The 1024 application states that your organization's income will come solely from member assessments. The majority of your expenses are used for maintenance of common areas, insurance, utilities, and professional fees.

Section 501(c)(6) of the Code provides exemption from Federal income tax of business leagues, chambers of commerce, real-estate boards, boards of trade or professional football players, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

ENCLOSURE I CONTINUED

[REDACTED]

Revenue Ruling 59-234, 1959-2 C.B. 149 discusses whether the operation of a multiple listing system by an otherwise exempt real estate board will cause it to be denied exemption from Federal income tax under section 501(c)(6) of the Code. This ruling found that such an activity is inherently designed for the rendering of particular services for individual members and that it constitutes a regular business of a kind ordinarily carried on for a profit. The ruling concluded, therefore, that where the primary purpose or activity of a real estate board is the operation of a multiple listing system, the organization does not qualify under section 501(c)(6) of the Code.

In Revenue Ruling 67-182, 1967-1 C.B. 141, it was held that an organization whose only activity is providing a reference library of "electric logs", maps and information services used solely by its members in their oil exploration businesses is not exempt from Federal Income tax as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954.

Since you are maintaining the common areas of [REDACTED] for your members, you are similar to both Revenue Rulings 67-182, 1967-1 C.B. 141 and 59-234, 1959-2 C.B. 149 which state that if an organization is providing particular services to its members, then the organization will be excluded from exemption from Federal Income tax as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954.

A determination has also been made as to whether or not you qualify as a social welfare organization under section 501(c)(4) of the Code.

Section 501(c)(4) of the Code provides, in part, that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare qualify for recognition of exemption.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides, in part, that:

...an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements....

In Revenue Ruling 72-102, 1972-1 C.B. 149, it was held that a membership organization formed by a developer to administer and enforce covenants for preserving the architecture and appearance of a housing development and to own and maintain common green areas, streets, and sidewalks for the use of all development residents was exempt under section 501(c)(4) of the Code.

ENCLOSURE I CONTINUED

[REDACTED]

Revenue Ruling 74-99, 1974-1 C.B. 131 which modified and clarified Revenue Ruling 72-102, provides in part that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The Revenue Ruling, in reciting the areas and facilities owned and maintained by the organization, speaks only of "common green areas, streets, and sidewalks." The Revenue Ruling was, by the quoted phrases, designed to indicate that the only areas and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community, health, safety and welfare.

Thus, the Revenue Ruling was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association, as appropriate and consistent with exemption under section 501(c)(4).

Revenue Ruling 74-17, 1974-1 C.B. 130, states that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption.

Since you are maintaining a research and business park on behalf of unrelated corporations, you are similar to the organization described in Revenue Ruling 74-17. In addition, you are not formed to serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, and the property you maintain is not open for the use and enjoyment of the general public. In light of these facts, you do not qualify as an organization described in section 501(c)(4) of the Code.